

(c) Except for CareFirst's obligation to make contributions under the CareFirst Plans and except for its self-insured arrangements (each as disclosed in the CareFirst Disclosure Schedule), CareFirst is not subject to any direct obligation or liability under any of the CareFirst Plans. Each CareFirst Company has paid in full to its employees, agents and contractors all wages, salaries, commissions, bonuses and other direct compensation for all services performed by them, except where the failure to make such payment would not have a CareFirst Material Adverse Effect. No CareFirst Company is liable for any severance pay or other payments on account of termination of former employees except as disclosed in the CareFirst Disclosure Schedule or as would not have a CareFirst Material Adverse Effect.

(d) Each CareFirst Company has complied in all material respects with the applicable provisions of ERISA, the published authorities thereunder and all applicable federal and state laws relating to the CareFirst Plans, including laws relating to the employment of labor (including the provisions thereof relating to wages, hours, collective bargaining and the payment of social security and taxes), and is not liable for any arrearages of wages, any ~~tax~~ or any penalty for failure to comply with any of the foregoing, except where such failure to comply or liability would not have a CareFirst Material Adverse Effect.

(e) There is no labor strike, dispute, slowdown or stoppage actually pending or, to the knowledge of CareFirst, threatened against or affecting a CareFirst Company or its business, except as would not have a CareFirst Material Adverse Effect. Except as would not have a CareFirst Material Adverse Effect: (a) no representation question exists with respect to the employees of a CareFirst Company, and (b) no collective bargaining agreement with employees of any CareFirst Company is in effect or currently being negotiated.

(f) CareFirst has delivered or made available to Purchaser copies of all documents and summary plan descriptions, which are true and correct, with respect to the CareFirst Plans, or summary descriptions of any CareFirst Plans not otherwise in writing.

(g) To the knowledge of CareFirst, there are no negotiations, demands or proposals that are pending which concern matters now covered, or that would be covered, by plans, agreements or arrangements of the type described in this Section 4.12.

(h) Except as disclosed in the CareFirst Disclosure Schedule:

(i) Each CareFirst Company has performed in all material respects all of its obligations under all of the CareFirst Plans.

(ii) To the knowledge of CareFirst, there are no actions (other than routine claims for benefits or other actions that would not have a CareFirst Material Adverse Effect) pending or threatened against the CareFirst Plans or their assets, or arising out of the CareFirst Plans, and, to the knowledge of CareFirst, no facts exist which may reasonably be expected to give rise to any such actions.

(iii) Each of the CareFirst Plans can be terminated by a CareFirst Company within a period of thirty (30) days following the Closing, without payment of any

CareFirst Disclosure Schedule or any CareFirst Permitted Liens. Except as set forth on the CareFirst Disclosure Schedule, there is not under any such CareFirst Real Property Lease any existing default, or any condition, event, or act which with notice or lapse of time, or both, would constitute such a default, which in either case, in the aggregate with all such other CareFirst's Real Property Leases under which there is such a default, condition, event or act, would have a CareFirst Material Adverse Effect.

Section 4.21. Affiliate Transactions.

Neither ~~Except as disclosed on the CareFirst Disclosure Schedule~~, neither CareFirst nor any CareFirst Subsidiary is a party to any oral or written agreement, or, since December 31, 2000, has engaged in any transaction, with any of its directors or officers or any of their respective Affiliates (other than the CareFirst Companies) (any such agreement or transaction, an "Affiliate Transaction"), other than payments of salary, bonus or other compensation as an employee or director of a CareFirst Company, where such agreement or transaction involved value in excess of \$250,000.

ARTICLE V

Representations And Warranties Of Purchaser And CFAC

For the purposes of all the representations and warranties made in this Article V, CFAC shall be considered a "Purchaser Subsidiary." Purchaser and CFAC hereby jointly and severally represent and warrant to CareFirst as follows:

Section 5.1. Organization, Qualification and Authorization

(a) Purchaser is a corporation duly organized, validly existing and in good standing under the laws of the State of ~~California~~; each Purchaser Subsidiary is listed in the Purchaser SEC Filings or on the Purchaser Disclosure Schedule. Each Purchaser Subsidiary is a corporation duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation, which jurisdictions are listed on the Purchaser Disclosure Schedule.

(b) Each Purchaser Company has all requisite power and authority, corporate and other, to carry on and conduct its business as it is now being conducted and to own or lease its property and assets, except where the failure to satisfy the representations of this Section 5.1(b) would not result in a Purchaser Material Adverse Effect. The Purchaser has delivered or made available to CareFirst accurate and complete copies of the certificates of incorporation and bylaws, or equivalent governing instruments, as currently in effect, of each of the Purchaser Companies as of the date hereof.

(c) Each Purchaser Company is duly qualified or licensed to do business and is in good standing in each jurisdiction in which the ownership or operation of its assets or the conduct of its business requires such qualification or licensing, except where the failure to be so

qualified, licensed or in good standing would not result in a Purchaser Material Adverse Effect. All such jurisdictions are listed on the Purchaser Disclosure Schedule.

(d) The Purchaser Disclosure Schedule sets forth every entity as of the date hereof which is a Purchaser Subsidiary and the equity interests of such entities that are owned by Purchaser. Purchaser owns all the issued and outstanding shares of CFAC.

Section 5.2. Authority.

Purchaser and CFAC, respectively, have all requisite power and authority to execute, deliver and perform this Agreement and to consummate the transactions contemplated hereby, subject to the receipt of regulatory approvals set forth in Section 5.4 hereof. The execution and delivery of this Agreement by Purchaser and CFAC, the performance of their obligations hereunder and the consummation by them of the transactions contemplated hereby, including, as to Purchaser, the issuance of the Purchaser Common Stock to be issued in the Merger, have been duly and validly authorized by Purchaser's and CFAC's respective Boards of Directors, and except for the approval of Purchaser's stockholders, no other corporate act or corporate proceeding on the part of Purchaser or CFAC is necessary to approve the execution and delivery of this Agreement, the performance by Purchaser and CFAC of their obligations hereunder or the consummation of the transactions contemplated hereby.

1/ covered by (a). why don't need except last sentence

Section 5.3. Execution and Binding Effect.

This Agreement has been duly and validly executed and delivered by Purchaser and CFAC, and constitutes, and the other documents and instruments to be executed and delivered by Purchaser or CFAC pursuant hereto upon their execution and delivery by Purchaser or CFAC on or prior to the Closing Date will constitute (assuming, in each case, the due and valid authorization, execution and delivery thereof by the other party or parties thereto), legal, valid and binding obligations of Purchaser or CFAC, enforceable against Purchaser or CFAC in accordance with their respective terms, except as such enforceability may be limited by (a) bankruptcy, insolvency, rehabilitation, reorganization, moratorium, or similar laws affecting enforcement of creditors' rights generally and (b) general equitable principles.

Section 5.4. No Violation; Consents and Approvals.

(a) Except as set forth on the Purchaser Disclosure Schedule and subject to the governmental filings (and other matters) referred to in Section 5.4(b), the execution, delivery and performance of this Agreement by each of Purchaser and CFAC, compliance with the provisions of this Agreement, and the consummation by each of Purchaser and CFAC of the transactions contemplated hereby will not (i) conflict with or violate any provisions of the certificates of incorporation or other comparable documents or bylaws of Purchaser or CFAC; (ii) conflict with, violate or result in any breach of, or constitute a default whether with or without notice or lapse of time or both, or give rise to any right of termination, cancellation or acceleration under any of the terms, conditions or provisions of, or render unenforceable, any note, bond, mortgage, indenture, license (including any license granted by the BCBSA), franchise, permit, agreement,

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any right of conversion or exchange under any outstanding security or other instrument, and neither Purchaser nor CFAC is obligated to issue or transfer any shares of its capital stock for any purpose and (ii) there are no outstanding obligations of Purchaser or CFAC to purchase, redeem or otherwise acquire any outstanding shares of capital stock of Purchaser or CFAC.

(d) The Purchaser Common Stock to be issued in the Merger, when issued in accordance with this Agreement and the Articles of Merger, will be duly and validly issued, fully paid and nonassessable, and will be issued in compliance with all applicable federal and state securities laws.

Section 5.6. SEC Filings; Financial Statements.

(a) Purchaser has delivered or made available to CareFirst true and correct copies of (i) its Annual Reports on Form 10-K, as amended, for the years ended December 31, 2000, 1999 and 1998, as filed with the SEC, (ii) its proxy statements relating to all of Purchaser's meetings of stockholders (whether annual or special) since January 1, 2000, as filed with the SEC, and (iii) all other reports, statements and registration statements (including Quarterly Reports on Form 10-Q and Current Reports on Form 8-K, as amended) filed by Purchaser with the SEC since January 1, 2000 (the reports and statements set forth in clauses (i), (ii) and (iii) are referred to collectively as the "Purchaser SEC Filings"). As of their filing dates, none of the Purchaser SEC Filings contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements herein in light of the circumstances under which they were made, not misleading. The Purchaser SEC Filings at the time of filing complied in all material respects with the Exchange Act or the Securities Act, as the case may be, and the rules and regulations thereunder.

(b) Purchaser has delivered or made available to CareFirst copies of (i) audited consolidated financial statements of Purchaser at and for the years ended December 31, 2000, 1999 and 1998, and (ii) unaudited consolidated financial statements of Purchaser at and for the three-month period ended March 31, 2001.

nine (c) The financial statements referred to in clause (b) above (the "Purchaser Financial Statements") are true and complete in all material respects, have been prepared in accordance with GAAP, consistently applied throughout the periods covered by such statements (except as may be stated in the explanatory notes to such statements) and present fairly, in all material respects, the financial position and consolidated results of operations of the Purchaser Companies at the dates of and for the periods covered thereby. The Purchaser Financial Statements for interim periods are subject to normal recurring year-end adjustments.

Section 5.7. Resale Registration Statement; Purchaser's Proxy Statement.

Except for information supplied or to be supplied by CareFirst in writing for inclusion therein, as to which no representation is made, neither the Resale Registration Statement, nor Purchaser's Proxy Statement contains or will contain (in the case of the Resale Registration Statement, as amended or supplemented, at the time such registration statement becomes

ARTICLE VI

Covenants Of The Parties

The parties covenant as provided in this Article VI, except as expressly set forth in the Schedules or as contemplated herein:

Section 6.1. Pre-Closing Operations.

(a) CareFirst. CareFirst hereby covenants and agrees that, pending the Closing, (for purposes of the following, "CareFirst" shall be deemed to include the CareFirst Subsidiaries):

- (i) except as approved by the Transition Team or otherwise consented to by Purchaser, CareFirst will operate and conduct its business only in the ordinary course in accordance with prior practices, shall maintain its assets in their present state of repair (ordinary wear and tear excepted), and shall use its Best Efforts to keep available the services of its employees and preserve the goodwill of its business and relationships with the customers, licensors, suppliers, distributors and brokers with whom it has business relations;
- (ii) except as approved by the Transition Team ^{STET} or otherwise consented to by Purchaser, CareFirst shall not:

~~{Subject to discussion.}~~

[Note: The following language will be included in the CareFirst Disclosure Schedule: Section 6.1 shall not prevent or preclude CareFirst from entering into or renewing any contract or commitment with customers or providers in the ordinary course of business consistent with past practice, excluding other than customer contracts with multi-year fee or rate guarantees involving an annual premium or administrative services fees in excess of \$2,500,000 or other customer contracts involving an annual premium or administrative services fees in excess of \$_____.]

- (A) sell, transfer or otherwise dispose of any assets, except for sales, transfers or disposals which would not have a CareFirst Material Adverse Effect;
- (B) enter into any new material contract or commitment relating to its business, with "material contract or commitment" being defined for the purpose of this subsection as customer contracts with a multi-year fee or rate guarantee involving an annual premium or administrative services fee in excess of \$2,500,000 and a contract or commitment which involves CareFirst incurring a liability or obligation (X) in excess of \$5 \$5 million individually, or (Y) in excess of \$1 million individually in the event CareFirst enters into new contracts or commitments which involve CareFirst incurring liabilities or obligations not otherwise approved pursuant to this